IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

Cr. Appeal No.71 of 2004.
Judgment reserved on : 06.11..2007.
Dated of Decision: November 22nd, 2007.

Surinder Singh ..... Appellant.

Versus

State of H.P. ..... Respondent.

Coram

The Hon'ble Mr. Justice Surjit Singh, Judge.

The Hon'ble Mr. Justice Surinder Singh, Judge.

Whether approved for reporting?Yes.

For the Appellant : Mr. Anand Sharma, Advocate.

For the Respondent: Mr. S. D. Vasudeva, Addl. Advocate General.

Surinder Singh, J:

The appellant stands convicted by the trial court, under Section 302 for allegedly committing the murder of his wife Mahima Devi and also under Section 309 of the Indian Penal Code for attempting to commit suicide, thus he was sentenced under Section 302 of the Indian Penal Code, to undergo life imprisonment and to pay a fine of Rs.5,000/-, in default of payment of fine to further undergo, simple imprisonment for a period of one year, and also to undergo imprisonment for one year under Section 309 of the Indian Penal Code. Both the sentences were ordered to run concurrently.

The appellant has assailed his conviction and sentence in this appeal.

Whether reporters of local papers may be allowed to see the judgment? Yes.

The admitted facts of the case are that:-

(i) Mahima Devi (deceased) was the pichhalag (from the previous husband) daughter of the first wife of Mansha Ram (PW2);

(ii) Shanti Devi is the second wife of Mansha Ram (PW);

(iii) The appellant fell in love with Mahima Devi and married her;

(iv) Mansha Ram, aforesaid was not happy with the said marriage;

(v) Both Mahima and the appellant, after about five months of their marriage started residing in the corner room of the house of Mansha Ram, for the last about one year and she gave a birth to a male child;

(vi) At the time of her murder, the said child was aged about 7 months;

(vii) Bhollo Devi, the aunt of Mansha Ram, was staying in the house of Mansha Ram, in village Kuhal, 5 days prior to the alleged incident; and

(viii) During the intervening night of 11th & 12th September, 2002, Mahima Devi was found murdered in her room. She had a sharp-edged cut injury on her throat and the appellant was having grievous stab injury on his stomach. Both were lying in their bed-room.

PROSECUTION CASE:

It is alleged that the relations between the appellant and his wife Mahima Devi (deceased) were not cordial, therefore, she came back to the house of her parents from her matrimonial house and started residing in the parental house in village Kuhal. Her husband also joined her there and she gave birth to a male child. Ever since the appellant had been pressurizing her to stay in her matrimonial house with him to which Mahima Devi refused, which caused the strained relations between them. Consequently, a brawl took place on

10.9.2002 in the presence of Pandit Dev Raj, who was in the house of Mansha Ram, called for some Puja.

During the night on 11/12.9.2002, Smt. Bhollo Devi complainant (PW1) was sleeping with the children of Mansha Ram, in the kitchen, whereas, the appellant and his wife Mahima Devi (deceased) were sleeping next to the adjoining room with their seven months old minor son. During that night, Mansha Ram (PW) and his wife Shanti Devi had gone to their field nearby to guard the maize crop.

At about 1.30 a.m., Bhollo Devi, aforesaid heard the cries of the male child of Mahima Devi. Bhollo Devi repeatedly asked Mahima Devi to open the door but there was no response. She pushed the door and switched on the light. She was aghast to see the scene inside the room. She found Mahima Devi in a pool of blood and blood was oozing out from the wound on her neck. The appellant was also lying on the floor with a stab injury on his stomach. There was a dagger (Ex.P1) lying nearby.

Bhollo Devi (PW) picked up the crying child and kept him in the kitchen with PW3 Kiran, daughter of Mansha Ram, where other children were sleeping. Thereafter, Bhollo Devi rushed to call Mansha Ram (PW2) and informed him about the above facts. All the three came to their house. Mansha Ram, after seeing all that from the door step, went to call the villagers. Surender s/o Bhoora, Ashok Kumar and Zalim Singh of their village came to the spot.

In the morning on 12th September, 2002, Surender Singh, aforesaid informed (PW4) Head Constable Sapinder Singh at about 6 A.M, who was posted as an Investigating Officer in Police Post, Nohradhar in district Sirmaur, that the daughter of Mansha Ram and the appellant were lying in a critical condition in their house and it appeared that both had died because of some feud between them. On this PW4, entered the Rapat Ext.PW4/A in the Roznamcha and sent a wireless message (Ext.PW7/A) to Police Station Renukaji, where it was received by PW7, Bishambar Thakur, S.I. /S.H.O. Thereafter PW7, along with some police officials reached the spot and found that Mahima Devi was dead and the injured appellant was sitting near the door of that room. There was blood all around, in the room. Smt. Bhollo Devi, got recorded her statement Ext.PW1/A, under Section 154 of the Code of Criminal Procedure, on the basis of which FIR Ext.PW5/A was formally recorded under the aforesaid Sections.

The inquest report was prepared and the photographs were taken. The dead body of Mahima Devi, was sent to Civil Hospital Rajgarh, for autopsy. PW7 S.I/SHO Bishamber Thakur, took into possession a dagger Ext.P1 lying in the room vide memo Ext.PW3/D. The blood stained clothes were also taken into possession. The dagger and clothes were sealed in presence of the witnesses. The site plan Ext.PW7/E was also prepared.

The appellant, who was injured, was taken to Rajgarh hospital, for his treatment for his stab injury. He was operated upon in emergency and remained admitted there for 7/8 days and then he was referred to P.G.I., Chandigarh.

On 17.9.2002, the appellant had also made the statement (Ex.PW5/B)at PGI Chandigarh, under Section 154 of the Code of Criminal Procedure, stating therein that he alongwith his wife Mahima Devi were residing in the house of his-in-laws, for the last about one year because, the relations interse the deceased and her mother-in-law were not cordial. As the appellant wanted to take back his wife and his child to her matrimonial home but the deceased resisted and her parents were also not interested to send her back. Therefore, the appellant stopped talking to his parents-in-law. In the presence of Pandit Dev Raj and Bhollo Devi, on 11.9.02, Mansha Ram and his wife refused to send the child and his wife with him. After taking their dinner in the evening, he alongiwth his wife went to their room to sleep, there he started persuading his wife to accompany him to his matrimonial home, but she refused. When she fell asleep he switched on the light and picked up the sword which was hanging on the peg and cut her throat. Consequently, she died without any cry. In the meantime, at about 11.30 a.m., his father-in-law Mansha Ram pushed the door with the result the bolt got broken. He entered inside and gave a kick blow to him. The appellant fell down and the sword fell of his hands. Mansha

Ram picked it up and sank it in his stomach and left the place after switching off the light. The appellant fell unconscious. After sometime, when he gained his senses, he took out the sword from his stomach and threw it on the floor. At about 1.30 a.m., his minor son started weeping. On hearing his cries Bhollo Devi came there, picked up the child and left the place. Mansha Ram came again after sometime. He cleaned the sword and kept it hiding in the roof top (Chhandarh). Thereafter he went to the kitchen and brought a Chhura (dagger), from the kitchen and threw it on the floor. The appellant was posing dead and saw all this while lying on the floor. On this statement, rukka was issued for registering a case under Section 307 of the Indian Penal Code against Mansha Ram, but there is nothing on record to show, if any FIR was registered on this statement.

S.I. Bishamber Thakur (PW7), on search did not find the sword, in the house of Mansha Ram. It came to light, during his investigation that after killing his wife, the appellant had tried to commit suicide by stabbing himself in the stomach with the same dagger (Ex.P1) which he recovered from the room of the deceased.

In the opinion of the Doctor (PW8), Smt. Mahima had died on account of the respiratory arrest caused by asphyxia due to the cut injury to the trachea and the surrounding tissues with accumulation of blood in trachea and bronchia. The

death had occurred within few minutes. The post-mortem report is Ext.PW8/A.

After completing the investigation, the challan was presented in the court for trial. Learned trial court, on going through the record, prima-facie, found a case under Section 302 and 309 of the Indian Penal Code, against the appellant, accordingly he was charge-sheeted. The appellant pleaded not guilty and claimed trial.

To prove its case the prosecution examined its witnesses and the appellant was also examined under Section 313 of the Code of Criminal Procedure. He had denied the circumstances, which were found attendant upon him. He had raised the defence that Mahima Devi had received the injury on her throat in a scuffle between him and his father-in-law Mansha Ram (PW2) while rescuing the appellant from Mansha Ram. According to the appellant, he had caught hold of the hand of Mansha Ram in which he was holding the dagger, to save himself but he lost the grip, Mansha Ram applied the force and the dagger got struck against the neck of Mahima Devi, who was rescuing the appellant. Thereafter, Mansha Ram gave a dagger blow on the stomach of appellant saying that all that had happened because of the appellant. He alleged fabrication of the case on him by Mansha Ram aforesaid to save his own skin.

The appellant was called upon to enter into his defence. He examined DW1, Ram Singh, a Technician from PGI, who

had brought the medical record regarding his admission in P.G.I., Chandigarh. DW2, Som Dutt was produced to prove that during the night of alleged incident, he had rushed to the spot after hearing that Mahima and appellant were lying in a pool of blood in the house and further that it was raining during that night.

After hearing the learned counsel for the parties and upon going through the record, the learned trial court had convicted and sentenced the appellant as aforesaid. The appellant felt aggrieved and dissatisfied with it and filed the instant appeal through jail. Since he was unrepresented and had requested to engage the counsel for him, the Court vide order dated 20.8.2007, engaged Shri Anand Sharma, Advocate at state expenses. He was supplied with the paper book and on his request his meeting was also arranged with the appellant within the court complex.

We have heard Shri Anand Sharma, Advocate and Shri Som Dutt Vasudeva, Additional Advocate General. We have reappraised and re-weighed the evidence on record in its all details.

As a matter of fact, the role of the court is to find out the truth from the evidence available on the record in order to do justice to the parties. The cardinal principal of criminal law is that the onus is always on the prosecution to prove its case to its hilt, but the accused is entitled for every reasonable doubt which creeps in the prosecution case. The accused can

always dispel the prosecution case by preponderance of probabilities in defence.

In the instant case, Smt. Bhollo Devi (PW1), **Bua** of Mansha Ram (PW2) was staying in his house for the last about 5 days of the alleged occurrence.

As already stated above, during that night the deceased Mahima Devi was in the company of the appellant, who was found murdered. The bolt of their room was found broken. The appellant was having a grievous stab-injury on his stomach, which according to the prosecution was an attempt to commit suicide by the appellant. There is no direct evidence of the crime and the case hinges entirely on the circumstantial evidence. PW8 Dr. Sanjay Aggarwal had medically examined the appellant on 12.9.2002 in sub-divsional hospital, Rajgarh and noticed the following injuries on his person:-

1. **Over the abdomen 4 cm entry wound in the epigastriam with no para in seasonal marks bile blood and food material was exuding out of the wound. He was taken up for emergency surgery in which 4 cm rent was found over the anterior wall of the stomach and 2 cm over the posterior wall.**
2. **There was 3 cm lever laceration. There was hemoperitoneum and fecal peritonitis.**

(MLC is Ex.PW8/B)

The injuries were very deep and in the opinion of the Doctor, these could not be self inflicted. Further it is clarified by him that even if the person want to inflict the injury on the stomach part under some frustration, it could not be so deep. Though he has stated that the above injury can be inflicted by the **Chhura** (dagger) Ext.P1, but in his cross-examination he

has also admitted that the above injury could be caused by another person by giving a stab blow. He further stated that when the appellant was brought to the hospital, he was not fit to make statement. He was operated in emergency and remained in hospital for 7-8 days and thereafter referred to PGI, Chandigarh.

As discussed above, the Doctor has stated that the injury on the person of the appellant cannot be self inflicted, which probablises the defence of the appellant. The statement Ext.PW5/B dated 17.9.2002 of the appellant is inadmissible in evidence. Therefore, in the circumstances narrated above, at least the appellant could not have been held guilty for the offence under Section 309 of the Indian Penal Code.

As far as the allegation of murder against the appellant is concerned, the learned trial court has wrongly placed reliance on the confessional statement (Ext. PW5/B) of the appellant. The circumstantial evidence, otherwise, connects the appellant with the offence of murder; for that reference to the statements of the following witnesses and circumstances are required to be made:-

(i) PW1 Bhollo Devi:-

According to Smt. Bhollo Devi, she was sleeping in the kitchen with PW3 Kiran and other children of PW2 Mansha

Ram. Said Mansha Ram and his wife were guarding the maize crop in their fields during the night. On hearing the cries of the child, she shouted for deceased but there was no response, thus she pushed the door with force and entered the room, switched on the light and saw Mahima Devi with a cut throat lying in the pool of blood. The appellant was lying injured near the door. She handed over the minor child to Kiran PW3 and went to call Mansha Ram from the field who came with his wife. After seeing the condition of his daughter inside the room, he did not enter the room and returned from the door. Thereafter, he called the villagers, who reached there within half an hour. According to her, this incident had taken place at about 1.30 a.m. during the midnight. In her cross-examination, she has denied the defence raised by the appellant that there was a scuffle inter-se Mansha Ram and the appellant on the ground that Mansha Ram wanted the appellant aforesaid to leave his house and there was a quarrel. It is denied by her that Mansha Ram and his wife were in the house. She could not say the time that at what time they had taken dinner. It is pertinent to note that in her cross-examination, it is not put as to how the deceased sustained the fatal injury on her throat.

(ii) **PW2 Mansha Ram**:

Mansha Ram (PW2) has stated that during that night, he was guarding the maize crop in the nearby fields' alongwith his wife. When he was informed by Bhollo Devi, he went to the spot and saw his daughter and appellant in the pool of

blood. Thereafter he went to call the villagers. Further that he had seen the dagger inside the room, which was being used by them for cutting vegetables and meat. Surender and Som Dutt had informed the police. When the police reached the spot, they prepared the inquest report. In his cross-examination, he has admitted that Mahima Devi was already born when he married his first wife. He had seven children from his second wife Shanti. All were residing in the same house at the time of incident. His elder son is married and he has admitted that the marriage between the appellant and Mahima Devi was a love marriage. They had good relations, but he (PW2) was not happy with this marriage. Though it is denied by him that he was compelling the appellant to go away from his house. He further stated that all of them had dinner together in the kitchen, but it is denied by him that there was a quarrel between him and the appellant. It is also denied that during the scuffle his wife, deceased Mahima Devi and other family members came in the room and that Mahima Devi had asked him not to quarrel with her husband. He has further denied that he was having a dagger in his right hand, which was caught hold by the appellant from the wrist, when he had tried to free his wrist, in that process it hit Mahima Devi with the result her throat was cut. He has denied having given a stab blow on the stomach of the appellant. PW8 Dr. Sanjay Aggarwal has specifically denied in his cross-examination that

such type of injury could be caused to the deceased as suggested above.

(iii). PW3 Kiran:

Kiran daughter of PW2 Mansha Ram has stated that she was sleeping in the kitchen with PW1 Bhollo Devi. She has further stated that on hearing cries of the child, Bhollo Devi-her **Bua,** went to the room of the appellant, brought the child, handed over to her and told her not to go to the room of the deceased and called her parents from the fields. Her father went upto the door of the room and returned, thereafter he informed them that both were lying in the pool of blood and then left to call the villagers. Next day, the police visited the spot and took the dagger Ex.P1 and dhatoo (head gear) Ex.P2 of the deceased in possession. In her cross-examination, she has denied that the deceased and appellant were having good relations, according to her they used to quarrel. She has denied that earlier there was a quarrel between the appellant and her father and her father told the appellant that in case he wanted to go to his village, he may go. She has denied that her father had given a stab blow on the stomach of the appellant. According to her there were seven persons sleeping in the kitchen, which includes herself, her Bua and other children and that her elder brother, who was married was present in the house during that night.

(iv) PW7 Bishambar Thakur, SI/SHO, P.S. Renukaji:

According to PW7, S.I/SHO Bishamber Thakur, who was at that time posted in Police Station Renukaji, he received wireless message Ext.PW7/A on 12.9.2002 and then he proceeded to village Kuhal alongwith other police officials at the house of Mansha Ram. He found the appellant sitting near the dead-body of his wife Mahima Devi, who was lying in the pool of blood. The appellant was having an injury on his stomach and the blood was oozing. It was at that time Bhollo Devi got recorded her statement Ext.PW1/A under Section 154 of the Code of Criminal Procedure, which was sent for the registration of the case. The appellant was sent by him immediately to the hospital at Rajgarh for treatment and took into possession the blood stained clothes and dagger Ex.P1, which were lying on the spot vide memo Ex.PW3/B to Ex.PW3/D. These articles were sealed on the spot and seal was handed over to PW Rajesh Kumar. He also prepared the sketch Ext.PW3/A of the dagger Ex.P1. The dead-body of Mahima Devi was sent for the post-mortem, which was performed by Dr.Sanjay Aggarwal (PW8) and he observed that the following injuries on her person:-

1. **There was incised wound 2" long on the neck in mid line just above the hyoid bone. Margins were sharp. The wound was bone deep. Underlying muscles were cut through. Trachea had been cut through in its whole circumference with no continuity between both the ends. Lower end of trachea contained blood. Esophagus was also cut through along with loss of continuity between both the ends. Margins of the**

wound were sharp. No foreign body seen. There was no hesitation cut marks on the neck.

2. **The left hand was soiled with clotted blood. There were incised wounds over left ring finger, left middle and left index finger over the palmer aspect. Six 1 cm on all fingers. The direction was horizontal between distal I-P joints and proximal I-P joints. Tailing of the wounds towards radial aspect was present. The depth of the wound was muscle deep. Margins were sharp. No other external injury was noted. The rigormortis had set in all joints. Riyor mortis was present over the buttocks and inter scapular region. External genitalia was normal.**

All other internal organs were normal.

The stomach contained semi-degisted food. No foul smell was present. Uterus was normal.

In the opinion of the Doctor, the death occurred due to respiratory arrest caused by asphyxia due to the injury to the trachea and the surrounding tissues with accumulation of blood in trachea and bronchi.

Probable time between injury and death is few minutes and probable period between death and post mortem is 12-36 hours.

According to him, injuries mentioned in the post mortem could not be caused with the single blow.

In his opinion, these injuries could be caused by Dagger Ex.P1, but he has over-ruled the possibility causing of these injuries accidentally. In his opinion, it could be caused intentionally. The details of the injuries and condition of the dead body has been given in the post mortem report Ext.PW8/A. In his cross-examination, he has stated that the width of the dagger Ex.P1 is not like that the width of the injury, but it was more than the width of the dagger. However, there was possibility of causing injury No.2 in a scuffle,

because it could not have been so deep. The intestine and urine bladder of the deceased was found empty.

On the critical examination of the aforesaid evidence, it is apparent that the death of Mahima Devi was homicidal. There is no direct evidence of the commission of crime. The case hinges upon the circumstantial evidence alone. From the evidence on record the circumstances are of conclusive nature and tendency; and establish the offence against the appellant.

The house of PW2 Mansha Ram consists two rooms and a kitchen on the first floor, as depicted in the site plan Ext.PW7/E. The corner room was under the occupation of the deceased and the appellant. During that night Mahima Devi (deceased) was in the company of the appellant, in the room which was under their occupation. Explanation for her killing offered by the appellant is false as noticed above. The medical evidence discussed above has over-ruled the possibility of sustaining the fatal injury to the deceased by a dagger in scuffle, as alleged.

It is also clear from the record that there was an ample time and opportunity to the complainant party to make a story as best suited to them.

The plea of scuffle and sustaining the fatal injury by the deceased, as alleged by the appellant, could not be probablised, in view of the above proved circumstances which over rules the innocence of the appellant completely.

Therefore, in our considered opinion for the reasons stated above, we find the above circumstances conclusive in nature and consistent with the hypothesis of the guilt of the appellant. The motive is writ large, thus we hold the appellant responsible and guilty for causing murder of his wife Mahima Devi, however the prosecution has failed to prove the attempt to commit suicide by him beyond a reasonable doubt. Accordingly, the appellant is acquitted of the charge under Section 309 of the Indian Penal Code. His conviction and sentence under Section 302 of the Indian Penal Code is upheld. Consequently, the appeal is party allowed.

Before parting with this appeal, we would like to record our appreciation to Sh. Anand Sharma, amicus curie, who has put his hard labour in the case and rendered his valuable services to enable this court to sift the evidence to reach to a rightful conclusion.

The matter stands disposed of.

Send down the records.

(Surjit Singh)
Judge

November 22nd, 2007. **(Surinder Singh)**
(Pds) **Judge.**